Aliran Gemilang Services v Hoh Brother Enterprise

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)(NCVC)-525–03 OF 2012
MOHD HISHAMUDIN, AZAHAR MOHAMED AND ANANTHAM KASINATHER JJCA
26 DECEMBER 2012

Civil Procedure — Res judicata — Summons in chambers — Overpayment of services — Claim for refund — Suit struck out by High Court — Appeal against decision — Whether claim frivolous, vexatious and abuse court process — Principle of res judicata — Whether action barred by principle of res judicata — Whether clear-cut case for application of res judicata principle established

In the High Court, the appellant ('plaintiff') claimed against the respondent ('defendant') for the refund of RM662,498.64 which was allegedly overpaid by the former for seafood products supplied by the latter. It was alleged that the plaintiff supplied cooked food to the Police Training Centre ('PULAPOL'); that it obtained its supply of raw seafood from the defendant; and that, it had made some overpayments; and these overpayments made from time to time by the defendant in their bills to the plaintiff were more than the quantity of raw seafood that was actually supplied by the defendant to the plaintiff. The defendant applied to strike out the application and in allowing the application, the High Court dismissed the appellant's case. In the present case, the defendant filed a summons in chambers application pursuant to O 18 r 19(1) of the Rules of the High Court 1980 to strike out the plaintiff's statement of claim on the grounds that the claim was frivolous, vexatious and an abuse of the process of the court. The defendant averred that the plaintiff's action against it was barred by the principle of res judicata as the defendant had previously filed an action in the Sessions Court of Shah Alam against Vestime Corp Sdn Bhd ('Vestime Corp'), claiming against Vestime Corp for payment in respect of the supply of raw seafood by the defendant to Vestime Corp. In that sessions court action, the defendant in the present case as the plaintiff there did not make any mention of the present plaintiff. The sum claim by the defendant (as the plaintiff before the sessions court) against Vestime Corp was RM201,940.40. The sessions court allowed the defendant's claim against Vestime Corp but only to the extent of RM196,940.40.

Held, allowing the appeal with costs:

(1) This appeal should be allowed because the defendant did not establish that this was a clear-cut case for the application of the res judicata principle. For one thing — and this was an important consideration

when dealing with an issue of res judicata — the plaintiff in the present case, Aliran Gemilang, was not a party in the sessions court action. There, the parties were Hoh Brother Enterprise (as the plaintiff) and Vestime Corp (as the defendant). In fact, the defendant (Hoh Brother Enterprise) in our case, as the plaintiff in the sessions court action, did not mention at all about the plaintiff (Aliran Gemilang) in its statement of claim in the sessions court action (see para 10).

(2) In fairness to the defendant, although the defendant never mentioned the plaintiff in its statement of claim at the sessions court, the defendant in the sessions court case, Vestime Corp, on the other hand, did mention the plaintiff's name (Aliran Gemilang) in its statement of defence. Vestime Corp, in its statement of defence, alleged that it had entered into a joint venture with the plaintiff (Aliran Gemilang) to supply cooked food to PULAPOL; that the plaintiff (Aliran Gemilang) had appointed the defendant to manage the making of payments to the present defendant for the supply of raw seafood on behalf of the plaintiff on the basis of helping one another and also as a partner in the partnership (see para 11).

[Bahasa Malaysia summary

Di Mahkamah Tinggi, perayu ('plaintif') menuntut daripada responden ('defendan') bagi pemulangan bayaran sebanyak RM662,498.64 yang didakwa dibayar berlebihan oleh plaintif untuk produk makanan laut yang dibekalkan oleh defendan. Adalah didakwa bahawa plaintif membekalkan makanan siap dimasak ke Pusat Latihan Polis ('PULAPOL'); bahawa ia mendapat bekalan makanan laut mentah daripada defendan; dan bahawa, ia telah membuat beberapa bayaran berlebihan; dan bayaran berlebihan yang dibuat dari masa ke semasa dalam bil-bil oleh defendan kepada plaintif, melebihi kuantiti makanan laut mentah yang sebenarnya dibekalkan oleh defendan kepada plaintif. Defendan memohon untuk membatalkan permohonan dan dalam membenarkan permohonan tersebut, Mahkamah Tinggi menolak kes perayu. Dalam kes ini, defendan memfailkan permohonan saman dalam kamar di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980 untuk membatalkan penyataan tuntutan plaintif atas alasan bahawa tuntutan tersebut remeh, menyusahkan dan satu penyalahgunaan proses mahkamah. Defendan menghujahkan bahawa tindakan plaintif terhadapnya terhalang oleh prinsip res judicata kerana defendan memfailkan tindakan di mahkamah sesyen terhadap Vestime Corp Sdn Bhd ('Vestime Corp') sebelum ini bagi menuntut pembayaran bekalan makanan laut mentah oleh defendan kepada Vestime Corp. Dalam tindakan di mahkamah sesyen, defendan dalam kes ini, sebagai plaintif, tidak menyebut mengenai plaintif dalam kes ini. Jumlah yang dituntut oleh defendan (sebagai plaintif di mahkamah sesyen) terhadap Vestime Corp adalah RM201,940.40. Mahkamah sesyen membenarkan

tuntutan defendan terhadap Vestime Corp tetapi hanya setakat RM196,940.40.

Diputuskan, membenarkan rayuan dengan kos:

(1) Rayuan ini harus dibenarkan kerana defendan tidak membuktikan bahawa ini adalah satu kes yang jelas memerlukan pemakaian prinsip res judicata. Ini kerana — dan ini adalah satu pertimbangan yang penting apabila berurusan dengan isu res judicata — plaintif dalam kes ini, Aliran Gemilang, bukan pihak kepada tindakan dalam mahkamah sesyen. Di mahkamah sesyen, pihak-pihak adalah Hoh Brother Enterprise (sebagai plaintif) dan Vestime Corp (sebagai defendan). Malah, defendan (Hoh Brother Enterprise) dalam kes ini, sebagai plaintif dalam tindakan mahkamah sesyen, tidak menyebut langsung mengenai plaintif (Aliran Gemilang) dalam penyataan tuntutan dalam tindakan di mahkamah sesyen (lihat perenggan 10).

(2) Demi keadilan buat defendan, walaupun defendan tidak pernah menyebut mengenai plaintif dalam penyataan tuntutan di mahkamah sesyen, defendan dalam kes mahkamah sesyen, Vestime Corp, walau bagaimanapun, ada menyebut mengenai plaintif (Aliran Gemilang) dalam penyataan pembelaannya. Vestime Corp, dalam pernyataan pembelaannya, mendakwa bahawa ia telah memeterai satu perjanjian usaha sama dengan plaintif (Aliran Gemilang) untuk membekalkan makanan siap dimasak kepada PULAPOL; bahawa plaintif (Aliran Gemilang) telah melantik defendan untuk menguruskan penyediaan pembayaran defendan dalam kes ini bagi bekalan makanan laut mentah bagi pihak plaintif atas dasar membantu satu sama lain dan juga sebagai rakan kongsi dalam perkongsian tersebut (lihat perenggan 11).]

Notes

For cases on summons in chambers, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 7272–7273.

Legislation referred to

Rules of the High Court 1980 O 18 r 19, 19(1)

Indrani (Jamaluddin Ibrahim & Associated) for the appellant.
Pradeep Kumar (Khairul Bariah with him) (Syarikat KL Rekhraj) for the respondent.

Mohd Hishamudin JCA (delivering judgment of the court):

[1] This appeal emanates from the High Court of Malaya at Shah Alam.

[2] On 14 February 2012, the High Court of Shah Alam had allowed the

respondent's striking out application pursuant to O 18 r 19 of the Rules of the High Court 1980 ('the RHC'); and had dismissed the appellant's writ action against the respondent.

[3] On 21 February 2012, the appellant appealed to the Court of Appeal.

[4] On 15 May 2012, we allowed the appeal with costs.

[5] Our reasons are as follows.

[6] At the High Court, the appellant's/plaintiff's claim against the respondent/defendant is for the refund of a sum of RM662,498.64, being a sum which the appellant/plaintiff alleges it had overpaid the respondent/defendant for the supply of seafood products (like fish, prawns and squids,) by the respondent/defendant to the appellant/plaintiff.

[7] In this judgment, from now onwards, we will be referring to the appellant as 'the plaintiff', and to the respondent as 'the defendant'.

[8] The plaintiff alleges in its statement of claim that it was the supplier of cooked food to the Police Training Centre (known by the acronym PULAPOL) at Jalan Semarak, Kuala Lumpur; that it obtained its supply of raw seafood from the defendant; and that, in the course of making payments to the defendant, it had made some overpayments; and these overpayments were caused by the fact that the claims made from time to time by the defendant in their bills to the plaintiff were more than the quantity of raw seafood that was actually supplied by the defendant to the plaintiff.

[9] In the present case, after the defendant had filed its statement of defence, it proceeded to file a summons in chambers application pursuant to O 18 r 19(1) of the RHC to strike out the plaintiff's statement of claim on the grounds that the claim was frivolous, vexatious and an abuse of the process of the court. According to the defendant, the plaintiff's action against it is barred by reason of the principle of res judicata because the defendant (Hoh Brother Enterprise) had previously filed an action in the Sessions Court of Shah Alam against a company called Vestime Corp Sdn Bhd ('Vestime Corp'), claiming against this company (Vestime Corp, that is to say, the defendant at the sessions court) for payment in respect of the supply of raw seafood (like fish, prawns and squids) by the defendant to Vestime Corp. In that Shah Alam Sessions Court action, the defendant in our case, Hoh Brother Enterprise, was the plaintiff. In that sessions court action, the defendant in our case (Hoh Brother Enterprise), as the plaintiff there, in its statement of claim, did not make any mention of the plaintiff (Aliran Gemilang) in the present case. The sum claim by the defendant (as the plaintiff before the sessions court) against Vestime Corp was

RM201,940.40. In the event, at the conclusion of the trial at the sessions court, the sessions court allowed the defendant's claim against Vestime Corp but only to the extent of RM196,940.40.

[10] In our judgment, this appeal should be allowed because the defendant has not established that this is a clear-cut case for the application of the res judicata principle. For one thing — and this is an important consideration when dealing with an issue of res judicata — the plaintiff in the present case, Aliran Gemilang, is not a party in the sessions court action. There the parties are Hoh Brother Enterprise (as the plaintiff) and Vestime Corp (as the defendant). In fact, the defendant (Hoh Brother Enterprise) in our case, as the plaintiff in the sessions court action, makes no mention at all about the plaintiff (Aliran Gemilang) in its statement of claim in the sessions court action.

[11] However, in fairness to the defendant, we just wish to add here that although the defendant (the respondent) in the appeal proceeding before us (Hoh Brother Enterprise), as the plaintiff in the sessions court case, never mention at all about the plaintiff (Aliran Gemilang) in its statement of claim at the sessions court, the defendant in the sessions court case, that is to say, Vestime Corp, on the other hand, did mention the plaintiff's name (Aliran Gemilang) in its statement of defence. Vestime Corp, in its statement of defence, alleges that it had entered into a joint venture with the plaintiff (Aliran Gemilang) on 20 September 2007 to supply cooked food to PULAPOL; that the plaintiff (Aliran Gemilang) had appointed the defendant (in the sessions court case, Vestime Corp) to manage the making of payments to Hoh Brother Enterprise (the defendant in our case) for the supply of raw seafood on behalf of the plaintiff on the basis of 'helping one another and also as a partner in the partnership' ('[a]tas dasar tolong menolong dan juga rakan kongsi Defendan'). Be that as it may, in our view, these averments by Vestime Corp (the defendant in the sessions court action) do not alter the fact that this is not a clear-cut case of res judicata.

[12] Appeal allowed with costs of RM5,000 for here and below to the appellant; order of the High Court set aside; action reverts back to High Court for trial.

Appeal allowed with costs.

Reported by Afiq Mohamad Noor